United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

75-7513

To be argued by
DAVID A. FIELD

UNITED STATES COURT OF APPEALS

for the

B

SECOND CIRCUIT

P/S

CARLO BORDONI,

Plaintiff-Appellant,

-against-

WASHINGTON POST COMPANY, JACK EGAN, and B.C. BRADLEE,

Defendants-Appellees.

ON APPEAL FROM AN ORDER AND JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF OF PLAINTIFF-APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

ISSUES PRESENTED FOR REVIEW

(1) Whether the newspaper articles published in the Washington Post on June 22, 1974, and June 26, 1974, or either of them are libelous *per se*;

(2) Whether, even if the articles were read to defame plaintiff, the Complaint must be dismissed under the New York "single instance" rule.

STATEMENT OF THE CASE

Preliminary Statement

Plaintiff, CARLO BORDONI, appeals from a judgment entered in the United States District Court, Southern District of New York, on August 7, 1975, dismissing plaintiff's Complaint against the defendants. (A 111).

This is a libel action against the Washington Post Company, a newspaper publisher, Jack Egan, a reporter, and B.C. Bradlee, Managing editor, predicated upon two separate newspaper articles which appeared in the Washington Post on June 22, 1974, and June 26, 1974. In his Complaint, the plaintiff alleged that the articles were libelous *per se*, thereby obviating

proof of special damages, because they (1) defamed plaintiff in his business calling as an expert in international financial affairs; and (2) intimated participation and involvement on the part of plaintiff in criminal acts in violation of Federal banking and other laws. (A 3)

After serving an Answer and Amended Answer, the defendants moved to dismiss the Complaint on the grounds that as a matter of law, the articles were not libelous per se. District Judge Edward Weinfeld granted defendants' motion. He held in a 15-page opinion that a reading of the articles did not substantiate plaintiff's claims that the articles reflected adversely upon plaintiff's business competency and integrity or charged him with participating in any criminal conduct. The Court held that no fair innuendo could justify plaintiff's interpretation of either article. (A 77)

On this appeal, plaintiff contends that the Court erred in dismissing the Complaint in that the articles were libelous per se.

Defendants simultaneously moved to dismiss on the grounds that the Complaint failed to properly allege the jurisdiction of the District Court. However, on oral argument, the parties stipulated to amend the Complaint with respect to jurisdiction so that that portion of the motion was withdrawn. (A 44-45).

Statement of Facts

(a) The Complaint

Plaintiff's Complaint asserts eight claims for relief: claims 1 through 4 relate to the article of June 22, 1974, and 5 through 8 relate to the article of June 26, 1974. The first portion of the Complaint alleges the status of the parties and the experience and qualifications of plaintiff as an international banker and monetary expert; that in or about August, 1972, plaintiff was elected as an outside member of the Board of Directors of Franklin New York Corp. ("Franklin"), a holding company whose principal subsidiary was Franklin National Bank (the "Bank"); and that at no time was plaintiff responsible for any foreign currency transaction to which the Bank was a party. (A 3-6)

The Complaint further alleges that on June 22, 1974, and on June 26, 1974, separate newspaper articles were printed, published, and circulated by defendants containing certain false, defamatory, and libelous statements concerning plaintiff, and that said articles are libelous *per se*. The articles are hereinafter set forth in their entirety with certain portions underscored by the authors of this Brief so as to call to the Court's attention that language which directly or indirectly relates to plaintiff. (A 7-16,

June 22, 1974

MERGER PLAN FOR FRANKLIN
FAR ADVANCED

"Efforts to merge financially troubled Franklin National Bank with either another New York bank or with a major English financial institution are far advanced, an authoritative source close to the situation said yesterday.

The major matter that needs to be cleared up is whether the Federal Deposit Insurance Corporation would assume substantial risk for all potential losses that have not yet been uncovered. This is what happened last year when the $1 billion asset U.S. National Bank went bankrupt and was quickly merged into Crocker National Bank of California.

On Thursday, Franklin National, 20th largest in the country, reported it lost $63 million in the first five months of the year, with $45.8 million attributed to foreign exchange speculation, most of it unauthorized, according to the bank.

The contemplated transaction would probably take the form of a straight acquisition, and it might involve several banks purchasing parts of $5 billion asset Franklin National, the source said.

In order to restore confidence in the bank, any arrangement would entirely remove mysterious Italian financier Michele Sindona - now Franklins major shareholder - from the scene, according to the source.

Interested merger candidates include England's National Westminster Bank, Barclay's Bank and Midland Bank, as well as medium size New York banks. Merger with one of New York's banking giants, the source said, would almost certainly draw opposition from the Justice Department.

It was also learned yesterday that Carlo Bordoni, a director of Franklin New York Corp., holding company for the bank, resigned at the board's request on Thursday although this has not been publicly announced.

Bordoni, a Sindona intimate and involved in multiple business enterprises in Sindona's far-flung financial web, was formerly a foreign exchange trader with an international reputation for the scale of his speculation.

Bordoni has been credited with organizing Franklin's foreign exchange department when Sindona purchased 22 per cent of the bank's stock in 1972 and introducing his own style of high volume foreign exchange speculation.

Bordoni's exit follows the firing of a foreign exchange trader who the bank charged with falsifying records and hiding transactions. In addition, the head foreign exchange trader for Franklin and the executive vice-chairman in charge of this area resigned.

On Thursday, Joseph W. Barr, former Treasury Secretary, took over the helm of the troubled bank when chairman and chief executive officer Harold V. Gleason resigned his position in the wake of a financial statement detailing the bank's losses.

In Franklin's revised financial statement on Thursday - scrutinized and approved by the Securities and Exchange Commission - the bank denied that it 'was presently a participant in any negotiations involving a merger, sale of assets or other disposition of any interest in the bank.'

However, the source, who has followed the unfolding of Franklin's financial problems and participated in trying to find solutions, said merger discussions have been going on for several weeks and the SEC was aware of this.

He said no deal is about to be consummated, but that an assumption of risk by the FDIC, which insures individual deposits in banks, would go a long way to eliminating any qualms other banks might have.

The Comptroller of the Currency, which regulates the bank, tentatively approved a plan in mid-May for a $50 million stock offering by the bank to shore up its capital position with Sindona's personal holding company, Fasco International, offering to buy all shares not subscribed to by the public. This potentially would give Sindona as much as 85 per cent of the shares of the bank.

However, the Federal Reserve Board, which has poured about $1 billion in funds into Franklin to permit it to keep meeting its obligations in spite of deposit outflows and is thus Franklin's major creditor, is known to be reluctant to approve a situation where Sindona through Fasco would be the holding company in control of the bank.

The Fed by virtue of its authority to approve bank holding companies is expected to prevail."

June 26, 1974

DEALS AIMED AT PROFITS
FOR FRANKLIN

"New York. June 25-Italian financier Michele Sindona, Franklin National Bank's largest shareholder, may have directed foreign exchange transactions to Franklin in 1973 and early 1974, from other foreign banks he controls in order to guarantee a profit for Franklin, Federal investigators said today.

The latest twist comes on top of revelations last week that Franklin lost $45.8 million in foreign exchange trading in the first five months of 1974. The bank said this was due almost exclusively to unauthorized trading and falsified transactions.

The profitable foreign exchange busines directed to Franklin and the losses in the same area seem to be independent events, according to one source investigating the situation.

The source said that the foreign exchange trades set up for Franklin with other Sindona business interests earned the bank an automatic profit because the transactions took place at a favorable rate independent of the actual foreign exchange market rate.

He added that there might be nothing illegal in any of this as far as Franklin is concerned, but said he did not know if the parties involved on the other side of the foreign exchange trades with Franklin lost money or offset potential losses with other currency transactions.

Foreign exchange transactions are basically speculations on the future movements of currencies. A trader will buy for future delivery of a currency at a set price in the hopes that it will go up. He will sell a currency with a future delivery in the expectation it will go down. In either case, he makes a profit. If a currency moves contrary to expectations, it produces a loss.

One top bank regulatory official today said foreign currency speculation was 'like shooting craps.'

According to Franklin's 1973 annual report, the bank last year earned $7.75 million in foreign exchange, approximately 60 per cent of the bank's profits for the year. This was up sharply from the $384,000 earned in 1972 when Sindona bought a 21.6 per cent share in Franklin through his Lichtenstein-based holding company, Fasco International.

A report filed earlier this year with the Securities and Exchange Commission said that Sindona, in addition to Franklin, had substantial or controlling interest in five foreign banks: Banca Finanziaria, Milan; Banca Unione, S.P.A., Milan (the two have since merged); Banca Di Messina; Banque De Financement, S.A., Geneva; and Bankhaus Wolff A.G., Hamburg.

The SEC and the Comptroller of the Currency are investigating how much of Franklin's profits last year are the result of business deliberately shunted Franklin's way by Sindona's other banks and business interests.

A source in the Comptroller of the Currency's office said it has looked at more recent trades between Franklin and other Sindona banks, and there was 'no evidence of Sindona or banks taking any profit out of Franklin.' To the contrary, he said, Franklin made money on these trades.

The source confirmed that the Comptroller was looking into the involvement of Carlo Bordoni in Franklin's foreign exchange operations but said this was not related to misevaluations of transactions related to recent losses.

Bordoni, a former foreign exchange trader who is involved in many of Sindona's business enterprises, including the Milanese banks, was put on the board of Franklin New York Corp., holding company for the bank, in 1972. He resigned from the board last Thursday with no reason given.

Bordoni today denied he resigned at the request of the Franklin board and said he was not involved in the foreign currency transactions which led to the Franklin losses, Dow Jones News Service reported.

Bordoni is credited with organizing Franklin's foreign exchange operations in 1972 and introducing the high-volume speculative style he has been noted for, and which some observers feel got the bank into trouble.

An investigation by the Comptroller into whether possible fraud was involved in the recent foreign exchange losses is continuing, according to a source, and includes everyone 'from the newest employee to the top of the bank.' The investigation into the whole foreign currency matter by the Comptroller is expected to wind up next week."

Copies of the articles were annexed as Exhibits "A" and "B" to the plaintiff's Complaint and are set forth at Pages A 17-18 of the Joint Appendix.

Plaintiff's Claims for Relief

The first claim for relief alleges the defendants' wilful and malicious printing, publication, and circulation of the false and defamatory article of June 22, 1974, alleged to be libelous per se; that as a result thereof BORDONI was financially injured, embarrassed, humiliated; and that the article impeached his character, credibility, honor, integrity, and professional competence; that plaintiff as a result thereof is entitled to exemplary damages of $2,500,000. (A 7-8)

The second claim for relief is similar to the first and alleges that the article of June 22, 1974 was libelous per se, but alleges that the printing, publication, and circulation of the article was in reckless disregard of the truth, injuring plaintiff as in the first claim for relief, and seeks exemplary damages of $2,500,000. (A 8-9).

The third claim for relief alleges the printing, publication, and circulation of the false and defamatory article of June 22, 1974, which was alleged to be libelous per se, that the defendants acted recklessly and/or negligently in publishing the article without investigating the truth; that Franklin is a publicly owned company traded on the New York Stock Exchange and required to file periodic reports; that the article meant and was understood by persons reading it to mean that BORDONI had participated in criminal acts in violation of Federal banking regulations and disclosure requirements; that as a result, BORDONI had been injured in the same manner as in the first and second claims for relief and seeks exemplary damages of $2,500,000. (A 9-10)

The fourth claim for relief alleges that the article of June 22, 1974, was false and defamatory and libelous per se; that BORDONI was injured in the same manner as in the first and second claims for relief and seeks compensatory damages of $5,000,000. (A 10-11)

The fifth claim for relief alleges the defendants' wilful and malicious printing, publication, and circulation of the false and defamatory article of June 26, 1974, alleged to be libelous per se; that as a result thereof BORDONI was financially injured, embarrassed, humiliated; and that the article impeached his character, credibility, honor, integrity, and professional competence; that plaintiff, as a result thereof, is entitled to exemplary damages of $2,500,000. (A 11-12)

The sixth claim for relief is similar to the fifth and alleges that the article of June 26, 1974, was libelous per se, but alleges that the printing, publication, and circulation of the article was in reckless disregard of the truth, injuring plaintiff as in the fifth claim for relief and seeks exemplary damages of $2,500,000. (A 12-13)

The seventh claim for relief alleges the printing, publication, and circulation of the false and defamatory article of June 26, 1974, which was alleged to be libelous per se, that

the defendants acted recklessly and/or negligently in publishing the article without investigating the truth; that Franklin is a publicly owned company traded on the New York Stock Exchange and required to file periodic reports; that the article meant and was understood by persons reading it to mean that BORDONI had participated in crinimal acts in violation of Federal banking regulations and disclosure requirements; that as a result, BORDONI had been injured in the same manner as in the fifth and sixth claims for relief and seeks exemplary damages of $2,500,000. (A 13-15)

The eighth claim for relief alleges that the article of June 26, 1974, was false and defamatory and libelous per se; that BORDONI was injured in the same manner as in the fifth and sixth claims for relief and seeks compensatory damages of $5,000,000. (A 15-16)

(b) Defendants' Motion to Dismiss

After serving both an Answer and an Amended Answer, defendants moved to dismiss the Complaint upon the grounds that the articles were not libelous per se, and that thus, due to the failure of the Complaint to plead special damages, the Complaint must be dismissed. The plaintiff argued that each of the articles was libelous per se so that special damages need not be pleaded.

The defendants' motion came upon to be heard on October 29, 1974, before District Judge Edwin Weinfeld where oral argument was presented together with arguments in the libel cases of Carlo Bordoni vs. Twin Coast Newspapers, Inc. and Harold Gold (74 Civ. 3170), also on appeal before this Court, and Carlo Bordoni vs. New York Times Company, Inc., A.M. Rosenthal, and John H. Allan, (74 Civ. 3168), not before this Court on appeal. (A 19-76)

(c) Disposition in the Court Below

District Judge Weinfeld held in a 15-page opinion (A 77-92) that reading the article as a whole and giving the words their natural, plain, and unaltered meaning with special emphasis on those portions which referred to plaintiff did not justify plaintiff's claims that either of the articles reflect adversely upon plaintiff's business competency and integrity or charge him with participating in any criminal act. The Court further held that no fair innuendo could justify plaintiff's interpretation of either article.

On this appeal, plaintiff contends that the articles of June 22, 1974, and June 26, 1974, are libelous per se as a matter of law; that, therefore, the Court erred in dismissing the Complaint; and that the judgment (A 111) appealed from should be reversed.

A R G U M E N T

Summary of Plaintiff's Position

The position of plaintiff on this appeal remains the same as it was in the District Court, which is that each of the articles is libelous *per se* in that each (1) reflects adversely upon plaintiff's business competency and integrity, and (2) charges him with participation in criminal conduct. Plaintiff further argues that the New York "single instance" rule is no bar to plaintiff's recovery.

POINT I

THE ARTICLES COMPLAINED OF ARE LIBELOUS PER SE

(a) For the Purposes of Defendants' Motion, the Allegations of the Complaint Are Deemed Admitted.

The law is well established that on a motion for judgment on the pleadings, every material fact stated in the Complaint is deemed admitted and that the Court must accept the allegations in the Complaint as true, Blanshard vs. City of New York, 262 N.Y. 5 (1933). Furthermore, the Court must construe the pleading liberally and make all reasonable inferences to sustain it. The Norman Company Inc. vs. County of Nassau, 27 A.D. 2d 936, 278 N.Y.S. 2d 719 (2d. Dept. 1967).

In Harrison vs. Winchell, 207 Misc. 275, 137 N.Y.S. 2d 82 (Sup. Court, N.Y. Co. 1955) plaintiff, a professional writer of wide reputation, brought an action for libel based upon the following words written by Walter Winchell: "Life settled out of Court with labor leader Van Arsdale over Chas. Yale Harrison's [the plaintiff's] 'Van Arsdale's Tight Little Island' piece of a few seasons ago. Paid him $17,500." Defendants moved to dismiss plaintiff's Complaint, claiming that the article was not libelous per se and that no special damages were alleged. The learned Justice Matthew M. Levy in denying the defendant's motion reviewed the guidelines to be followed by the Court:

> "On the present application - a motion for judgment on the pleadings - I must (in an action for libel as in other types of cases) take the complaint as it is, and not only assume it to be true, but construe it liberally, invoke every inference in its favor, make all reasonable implications to support it, and interpret it if possible so as to sustain the cause of action. Solomon v. LaGuardia, 267 App. Div. 435, 436, 46 N.Y.S. 2d 701, 702, leave to appeal denied, 267 App. Div. 957, 48 N.Y.S. 2d 335; Bentrovato v. Crinnion, 206 Misc. 648, 133 N.Y.S. 2d 120, 125-126." 137 N.Y.S. 2d at P. 84.

Consequently, the Court must accept as true the averments in the Complaint that:

(a) Plaintiff is an acknowledged expert in the business of domestic banking, international banking, economics, and monetary matters; (A 4)

(b) Plaintiff was elected an outside director of Franklin New York Corp., a holding company for Franklin National Bank; (A 5)

(c) At no time was Bordoni responsible for any foreign currency transaction to which Franklin National Bank was a party; (A 6)

(d) The articles published of plaintiff were false; (A 7, 11) and

(e) Plaintiff has been damaged thereby (A 7,12)

(b) The Articles Cast Aspersions Upon Plaintiff in his Business and Profession and Charge that Plaintiff Engaged in Criminal Conduct

The law is sufficiently clear and the defendants admit that a publication which holds one up to public contempt or disgrace or which induces an evil or unsavory opinion of him in the minds of a substantial number of the community is libelous per se, and therefore, actionable without allegation or proof of special damages, Mencher vs. Chesley, 297 N.Y. 94 (1947); that words are libelous per se if they affect the person in his profession, trade, or business by imparting to him any kind of fraud, dishonesty, misconduct, incapacity, unfitness, or want of any necessary qualification in the exercise thereof, Moore vs. Francis, 121 N.Y. 199 (1890); that an article charging another with the commission of a crime is libelous per se; Moore vs. Mfr. Nat'l. Bank of Troy, 123 N.Y. 420 (1890), Phillips vs. Murchison, 383 F. 2d 370 (2d Circ. 1967) cert. den. 390 U.S. 958 (1968).

The article appearing in the Post on June 22, 1974 (A 17) entitled 'Merger Plan for Franklin Far Advanced" makes the following statements and innuendos:

1. Franklin National Bank lost $63 million in the first five months of the year "with $45.8 million attributed to foreign exchange speculation, most of it unauthorized, according to the Bank";

2. That "in order to restore confidence in the Bank, any arrangement [merger or acquisition]

would entirely remove Italian financier Michele Sindona...from the scene";

3. That Bordoni is "a Sindona intimate and involved in multiple business enterprises in Sindona's far-flung financial web";

4. That Bordoni "resigned at the Board's request on Thursday." That, therefore, by innuendo, Bordoni's resignation was forced by the Board "in order to restore confidence in the Bank";

5. That Bordoni "was formerly a foreign exchange trader with an international reputation for the scale of his speculation", and that he "has been credited with... introducing his own style of high volume foreign exchange speculation";

6. That "$45.8 million [losses] attributed to foreign exchange speculation", that, therefore, by innuendo, Bordoni's "own style of high volume foreign exchange speculation has resulted in a $45 million loss";

7. That by innuendo, Bordoni's "own style of high volume foreign exchange speculation" was generally "unauthorized";

8. That "Bordoni's exit follows the firing of a foreign exchange trader who the bank charged with falsifying records and hiding transactions";

9. That, therefore, by innuendo, Bordoni's exit "at the Board's request" is also because the Board charged [him] with falsifying records and hiding transactions;

10. In essence, the article charges that Bordoni formerly "had an international reputation for the scale of his speculation" but that "introducing his own style of high volume exchange speculation" caused the bank a loss of "$45.8 million attributed to foreign exchange speculation" and that of said speculation, "most of the [it] was unauthorized"; that Bordoni's acts resulted in his dismissal; and that he may have falsified records and hid transactions.

A digest of the June 26, 1974 article (A 18) in the Post, entitled "Deals Aimed at Profits for Franklin", reveals the following statements and innuendos:

1. Franklin National Bank lost $45.8 million for the first five months of 1974 in its foreign exchange trading, which was due "almost exclusively to unauthorized trading and falsified transactions;"

2. The foreign exchange trades between Franklin National Bank and Sindona business interests earned the bank an automatic profit "because the transactions took place at a favorable rate independent of the actual foreign exchange market rate";

3. One bank regulatory official stated that "foreign currency speculation was like 'shooting craps'";

4. That regulatory agencies, including the SEC and the Comptroller of Currency, were investigating as to how much of the Bank's profits in 1973 were "the result of business deliberately shunted Franklin's way by Sindona's other banks and business interests";

5. That the Comptroller of Currency was "looking into the involvement of Carlo Bordoni in Franklin's foreign exchange operations";

6. By inference, that Bordoni was involved in foreign currency transactions "shunted Franklin's way" to create a favorable but false financial statement for the Franklin National Bank;

7. That Bordoni was a former foreign exchange trader who was involved in many of Sindona's

business interests, including the Milanese banks and, by innuendo, that Bordoni was connected with the banks with which the Franklin conducted the foreign exchange trading criticized in this article;

8. That "Bordoni is credited with organizing Franklin's foreign exchange operations in 1972 and introducing the high volume speculative style he has been noted for and which some observers feel got the bank in trouble;"

9. By inference, that Bordoni was "shooting craps" in foreign currency speculation which resulted in the substantial foreign currency exchange losses sustained by the bank;

10. That an investigation was being conducted by the Comptroller of the Currency "into whether possible fraud was involved in the recent foreign exchange losses", and that the investigation includes everyone "from the newest employee to the top of the bank";

11. That, by inference and innuendo, Bordoni's actions relating to foreign currency transactions and speculation might be fraudulent and illegal, thereby involving Bordoni in the commission of a crime.

12. In essence, the article states that Bordoni was responsible for putting the Franklin National Bank into foreign exchange operations and establishing highly speculative practices, which the article charges was like "shooting craps" and directly responsible for the substantial losses suffered by the Bank; that Bordoni was involved with many transactions which were arranged solely to falsify the Bank's financial condition; and that many of the transactions were fraudulent and illegal, thereby subjecting Bordoni to criminal charges.

In determining whether those statements and innuendos are libelous per se, this Court's attention is respectfully called to Judge Levy's bases for his ruling in Harrison vs. Winchell, supra:

> The question now to be resolved by the Court is - Is the publication, in the light of the proper innuendoes alleged in the complaint, libelous per se? I see no need to include in this opinion an analysis of the many precedents, pro and con, cited to me on this point. Each case must be decided on its own, for not often are claimed defamatory statements in precisely the same language or to be considered in exactly the same factual framework. I am of the view that a permissible innuendo in the case at bar is that Life Magazine was compelled to and did buy its peace because

> of a wrong done by the plaintiff with respect to the article written by him and published in the magazine...If, as I see it, the statement published by the defendants is susceptibl of two meanings - one defamatory and one non-defamatory - the adoption of the proper meaning in the light of all the facts would be a matter for the determination of the jury, Cooper vs. Rochester Ice Cream Co., 212 N.Y. 341, 106 N.E. 117." 137 N.Y.S. 2d at P. 84, 85.

The Post articles cast negative aspersions upon plaintiff's reputation and competence and disparage him in his business calling by attributing to him the responsibility for the Franklin National Bank's foreign currency exchanges and the Bank's losses in that field. The Court below erred in failing to read the articles in this manner.

The leading case of Moore vs. Francis, supra, held libelous per se a similar slur on a plaintiff's professional competency.

> "'Whatever words have a tendency to hurt, or are calculated to prejudice a man who seeks his livelihood by any trade or business, are actionable.' When proved to have been spoken in relation thereto, the action is supported, and unless the defendant shows a lawful excuse, the plaintiff is entitled to recover without allegation or proof of special damage, because both the falsity of the words and resulting damage are presumed. 1 Saund, 234, n.; 1 Am. Lead. Cas. 135."
>
> "...words affecting a man injuriously in his trade or occupation, may be libelous, although they convey no imputation upon his character.

> Words, says Starkie, are libelous if they affect a person in his profession, trade or business, 'by imputing to him any kind of fraud, dishonesty, misconduct, incapacity, unfitness or want of any necessary qualification in the exercise thereof.' Stark, Slander §188, 121 N.Y.at P. 206 (Emphasis added)

In a case strikingly similar to the one at bar, the Appellate Division, in Daily vs. Engineering and Mining Journal, 94 App. Div. 314, 88 N.Y.S. 6 (1st Dept. 1904), held libelous per se articles concerning the plaintiff, a financial manager engaged in "important financial commercial enterprises in the United States involving the use and management by the plaintiff of large sums of money entrusted to him by other persons residing in the United States and foreign countries." The defamatory articles stated of plaintiff "his extravagance startled people and finally got the company into trouble. He was deposed, and is no longer in California. The bills will doubtless be paid but it remains to be seen whether the mine pays as well as the stockholders were led to expect." The Complaint alleged that this meant and intended to mean that plaintiff caused the mining company to become financially embarassed by using its funds for plaintiff's own personal extravagance and that because thereof, he was removed from his position as manager and absconded from the State. A separate article charged that "The whole failure is the result of extravagant management. The breaking of the company involves San Francisco and London financiers and banks...The deal for the sale of the mine and its equipment was managed by [plaintiff.]"

The Appellate Division held that "The inference is natural that it was intended to state that such condition was brought about by the plaintiff's extravagant management; and, as the result, we have the charge against the plaintiff that, by extravagance in handling the business of the company, he caused it to become insolvent." The Court stated that each of the publications charged plaintiff with extravagance, if not with incompetence in the conduct of plaintiff's business, and said:

> "Charges, even though they do not impute to plaintiff disgraceful conduct, would be actionable if their tendency is to injure him in his particular business, calling, trade or profession. Ordinarily, the characterization of a person as extravagant would not be libelous, because persons are not necessarily lessened in the esteem of others merely because they are extravagant; but a charge that one's extravagance has brought to bankruptcy a company or enterprise in which others are interested may injuriously affect any man, and particularly one whose business it is to act as the manager of large enterprises in which others have invested money. We think, therefore, that the complaint, taking the fair import of the articles, namely, that the plaintiff, as manager, so extravagantly conducted the affairs of the company as to injure its credit to such an extent that attachments in favor of creditors were allowed against it, in connection with the averments as to the plaintiff's business or calling, states a good cause of action. Because, whether or not we construe the language as holding the plaintiff up to public scorn or ridicule, which would be a question of fact for the jury, or whether we conclude that its tendency, as claimed, was to inflict special damage on his business reputation and calling, in either view the complaint states a good cause of action." 88 N.Y.S. at P. 9 (Emphasis added)

The concurring opinion added that:

> "The article published by defendant, if believed, would certainly injure the reputation of a man engaged in the management of important financial and commercial enterprises involving the use of large sums of money by others. No one would care to intrust a man with large sums of money to aid in important financial commercial enterprises if his extravagance when engaged in like enterprises had been such as to startle people and get a company with which he was connected into trouble. The libel, charging that a mine managed by the plaintiff had become largely insolvent as a result of extravagance, would necessarily impute to the person responsible for the management a lack of proper business capacity, and would thus be a direct charge of business incapacity, which would entitle him to maintain an action for damages caused by the publication." 88 N.Y.S. at P 10. (Emphasis added).

The articles in the Washington Post charge Bordoni with responsibility for the Bank's huge foreign exchange losses thereby affecting and impeaching his business capacity. Certainly this is so when the articles are read as a whole, as they must be. Words by themselves innocent, may become deadly when used together.

The Court of Appeals in November vs. Time, Inc.,13 N.Y. 2d 175, 244 N.Y.S. 2d 309 (1963), stated that an article must be read in context to determine whether it is libelous per se; that the Court must not treat such language in its most inoffensive meaning; and the Court should apply such meaning to the article as one to whom it was addressed would construe it; further, that a jury should decide whether a libelous meaning should be ascribed.

"If every paragraph had to be read separately and off by itself plaintiff would fare pretty well. But such utterances are not so closely parsed by their readers or by the courts and their meaning depends not on isolated or detached statements but on the whole apparent scope and intent (Moore vs. Bennett, 48 N.Y. 472, 476). Plaintiff is a professional man. 'If, on their face, they [the words] are susceptible in their ordinary meaning of such a construction as would tend to injure him in that capacity, they are libelous per se and the complaint, even in the absence of allegation of special damages, states a cause of action' (Kleeberg vs. Sipser, 265 N.Y. 87, 91-92, 191 N.E. 845, 846). The courts 'will not strain' to interpret such writings 'in their mildest and most inoffensive sense to hold them nonlibelous' (Mencher vs. Chesley, 297 N.Y. 94, 99, 75 N.E. 2d 257,259). The words are to be construed not with the close precision expected from lawyers and judges but as they would be read and understood by the public to which they are addressed (Sydney vs. Macfadden Newspaper Pub. Corp., 242 N.Y. 208, 214, 151 N.E. 209, 210, 44 A.L.R. 1419). 'The casual reader might not stop to analyze, but could easily conclude that plaintiff is a crook and let it go at that' (Van Voorhis, J., in Cassidy vs. Gannett Co., 173 Misc. 634, 639, 18 N.Y.S. 2d 729, 734)". 13 N.Y. 2d at P. 178, 179. (Emphasis added.)

* * *

"No single sentence or declaration of alleged fact is directly and boldly defamatory but a jury should decide whether a libelous intendment 'would naturally be given to it by the reading public acquainted with the parties and the subject matter' (Cassidy vs. Gannett Co., 173 Misc. 634, 640, 18 N.Y.S. 2d 729, 734 supra)." (Emphasis added.)

"The gloss or interpretation which plaintiff would have the jury apply is derived not from external facts but is one which a reader might not irrationally attach to the article as written. The jury will be asked not to alter or expand the meaning of the actual words but to adopt a possible construction of them and it will be for the jurors to determine in which of two possible senses the words were used (see Morrison vs. Smith, 177 N.Y. 366, 369, 69 N.E. 725, 726; First Nat. Bank of Waverly vs. Winters, 225 N.Y. 47, 50, 121 N.E. 459, 460; Hoeppner vs. Dunkirk Printing Co., 254 N.Y. 95, 104, 172 N.E. 139 141, 72 A.L.R. 913)." 13 N.Y. 2d at P. 179.

In Sullivan vs. Daily Mirror, Inc., 232 App. Div. 507, 250 N.Y.S. 420 (First Dept. 1931), the Appellate Division reversed the lower court's dismissal of plaintiff's Complaint. Plaintiff had claimed that two articles published by the defendant concerning him were libelous per se. In reviewing the articles, the Court held:

"We are of the opinion that the learned justice at Special Term took an erroneous view of the effect of the publication. It is well settled that words that impute dishonesty are actionable per se (Den Norski Ameriekalinje Actiesselskabet vs. Sun Printing & Publishing Ass'n., 229 N.Y. 617, 129 N.E. 931), and that the publication of a charge which has a tendency to injure or prejudice one in the exercise of his profession or calling is libelous per se. (Ben-Oliel vs. Press Publishing Co., 251 N.Y. 250, 167 N.E. 432). So, too in construing an article it is to be considered in its entirety and in the light of the peculiar facts and circumstances to which it relates. More vs. Bennett, 48 N.Y. 472; Kloor vs. New York Herald Co., 200 App. Div. 90, 192 N.Y.S. 465. The test is whether to the mind of an intelligent man the tenor of the article and the language used naturally import a criminal or disgraceful act. Rossiter vs. New York Press Co., 141

> App. Div. 339, 126 N.Y.S. 325; Church vs. Tribune Ass'n., 135 App. Div. 30, 119 N.Y.S. 885. We are of the opinion that the publications justify the innuendo pleaded. We cannot read the articles in their entirety without being convinced of their tendency to impress the average intelligent mind with disgraceful conduct on the part of the plaintiff in the exercise of his profession." 250 N.Y.S. at P. 423 (Emphasis added.)

The Washington Post is a well-respected newspaper published worldwide for and read by business people, bankers, and professionals, among others. The articles published in the Post are intended to make an impact on this community. A court should interpret the articles as the Post's readers might interpret them.

> "It is to be observed that the articles here are written in a sporting vernacular which is easily and readily understood by those interested in prize fighting, and who read and follow daily sporting pages of newspapers. Such readers are familiar with the various persons and characters who participate in this class of sport and with their reputation for honesty or dishonesty, as the case may be. Certainly, to this class of readers the articles may well be open to the construction which the plaintiff has placed upon them in his pleading." (Sullivan vs. Daily Mirror, Inc., supra, Page 424.)

The misfortunes of the Franklin National Bank had an effect on the business and commercial community. It was a newsworthy item for the Post. The defendants knew that their articles would be read by powerful financiers, businessmen, and bankers and that it would be interpreted by them as to lay at Bordoni's doorsteps the Bank's $45.8 million foreign exchange loss. One need not strain to so read the articles and to believe that as a result of such losses Bordoni was incompetent, negligent, and/or

involved in some fraud or criminal wrongdoing.

In the case of Vigoda vs. Marchbein, 13 App. Div. 2d 111, 213 N.Y.S. 2d 778 (1st Dept., 1961) the alleged defamatory words memorialized in a letter to members of an association (Professional Orthodox Jewish Cantors), in which plaintiff was a member, were that plaintiff "asked our office secretary to give him 'a certain amount of blank receipts' from our receipt book, which she did. All he has turned in to our office from the appeal was $250 (two hundred and fifty dollars). As your Secretary at that time, I had to ask [plaintiff] for an account of all the receipts he had taken. He got very angry at me, saying I do not trust him!" The Appellate Division affirmed the Supreme Court in sustaining the sufficiency of the plaintiff's Complaint in alleging that the language of the letter was libelous per se.

> "In our opinion the complaint is legally sufficient. The triers of the fact might find that the communication reasonably implied and was so interpreted by the recipients to charge that plaintiff had obtained blank receipts from an employee of the Association, made solicitation of funds and thereafter failed to turn in the contributions until compelled to account for the blank receipts. 'It has long been the rule that words charged to be defamatory are to be taken in their natural meaning and that the courts will not strain to interpret them in their mildest and most inoffensive sense to hold them non-libelous.' Mencher vs. Chesley, 297 N.Y. 94, 99, 75 N.E. 2d 257, 259. 'The libel law has never been confined to charges of illegality or lawbreaking. Any false accusation which dishonors or discredits

> a man in the estimate of the public or his friends and acquaintances or has a reasonable tendency so to do is libelous.' Bennet vs. Commercial Advertiser Ass'n. 230 N.Y. 125, 127, 129 N.E. 343, 344." 213 N.Y.S. 2d at P. 780.

In Brown vs. Tregoe, 236 N.Y. 497 (1923), the article alleged to be libelous per se stated that plaintiff, operator of a mercantile agency business, was formerly employed by a company and lost his position, then was employed by another company which was critical of him, that there was information criticizing his paying qualities and his ungentlemanly practices and that... "prospective users of [plaintiff's] agency should satisfy themselves thoroughly as to the abilities and character of the men back of it.' The Court held:

> "Under proper innuendoes, we think that a jury at least would be permitted to say that when defendants, with the surrounding statements, reported that 'the paying qualities' of Brown had been criticized, this would mean, either that he was in financial straits and thus unable to pay promptly, or else that he intentionally and improperly retained moneys which came into his hands in his collection business. The possession and exhibition of either of these qualities by plaintiff undoubtedly would impair his standing and character in his business where, as the article stated, promptness of remittances was especially important, and thus the article might be found to contain charges affecting plaintiff's standing, honesty and reliability in the business which he is pursuing, and, if untrue, they would be libelous per se. Townsend on Slander,

§191; Moore vs. Francis, 121 N.Y. 199, 23 N.E. 1127, 8 L.R.A. 214, 18 Am. St. Rep. 810; Woodruff vs. Bradstreet Co., 116 N.Y. 217, 22 N.E. 354, 5 L.R.A. 555; Hartnett vs. Plumbers' Supply Ass'n. of New England, 169 Mass. 229, 235, 47 N.E. 1002, 38 L.R.A. 194." 236 N.Y. at P. 502. (Emphasis added.)

As an international banker, monetary expert and author, Bordoni's reputation rested on the cornerstone of professional integrity and skill. To perform, he must be of impeccable character and highly successful. To attribute to him dishonesty and incompetency in a respectable financial journal of worldwide circulation, is to destroy this cornerstone and bury him in its rubble.

Other articles making similar charges have been held to be libelous per se where the plaintiff's integrity, honesty, and standing in his business have been defamed. An article was held to be libelous per se where it reported the failure of commission merchants was due to plaintiff's reckless speculation in lard. Sawyer vs. Bennett, 20 N.Y.S. 835 (Sup. Ct., Gen. Term, First Dept. 1892).

In Liccione vs. Collier, 133 App. Div. 40, 117 N.Y.S. 639 (First Dept. 1909), it was held to be libelous per se to charge that a banker made inaccurate accountings and over-charges to ignorant depositors.

In the case of Jacquelin vs. Morning Journal Association, 39 App. Div. 515, 57 N.Y.S. 299 (First Dept. 1899), the Appellate Division affirmed a judgment predicated upon a claim of libel per se where the newspaper article stated, "It was learned at the Broadway Savings Bank and the Broadway National Bank that Mr. Rogers [plaintiff's intestate] had been suddenly dropped from their Board of Directors, but no information could be had for the reasons for this", and further that Rogers was a defendant in a fraud case, a spiritualist and had left the State to avoid process.

In Rodger vs. American Kennel Club, Inc., 131 Misc. Rep. 312, 226 N.Y.S. 451 (Sup. Ct., N.Y. Co. 1928), an article stating that plaintiff, a breeder of dogs, had been charged with misconduct in connection with the sale of a dog and had been suspended from the privileges of the club, was held to be "directly calculated to affect the plaintiff in his business" and, therefore, libelous per se without proof of special damages.

In the case of Kahane vs. Murdoch, 218 App. Div. 591 218 N.Y.S. 641 (First Dept. 1926), the Court held that there was a legitimate innuendo of libel per se. The writing before the Court stated that the plaintiff "went so far as to alter or forge orders after they had been given, so as to increase the size of the orders." It was held proper to allege in the Complaint the innuendo that plaintiff had committed the crime of forgery. Said the Court: "We think this is a legitimate innuendo from the

charge itself, and should have been allowed to remain in the Complaint. It does not transcend the meaning of the charge itself, and the words used therein are susceptible of the meaning ascribed." 218 App. Div. at P. 592.

The June 22, 1974 article in the Post published by defendants stated that "most" of Bordoni's "own style of high volume foreign exchange speculation" was "unauthorized" and that investigations were under way. By innuendo, therefore, the article stated that Bordoni may have been involved in some kind of fraudulent criminal activity in connection with the Bank's huge losses.

The June 26, 1974 article in the Post published by defendants stated that the loss in foreign exchange trading was due "almost exclusively to unauthorized trading and falsifying transactions" and that an investigation was being conducted by the Comptroller of Currency "into whether possible fraud was involved in the recent foreign exchange losses." By inference and innuendo, the article charged that Bordoni's actions relating to foreign currency transactions and speculation might be fraudulent and illegal, thereby involving Bordoni in a commission of a crime as well as impugning his professional competency, honesty, and integrity.

Such construction of the articles are reasonable. A contrary meaning would be strained.

The Court of Appeals in Sanderson vs. Caldwell, 45 N.Y. 398 (1871) established the following rules for construction:

> "In an action for defamation, if the application or meaning of the words is ambiguous, or the sense in which they were used is uncertain, and they are capable of a construction which would make them actionable, although at the same time an innocent sense can be attrituted to them, it is for the jury to determine upon all the circumstances, whether they were applied to the plaintiff, and in what sense they were used.
>
> The publisher of a libel cannot escape liability by veiling a calumny under artful or ambiguous phrases, or by indirectly charging that which would be slanderous, if imputed in direct and undisguised language. The language of the publication in this case, if capable of an innocent construction, is also clearly capable of a construction which would make it libelous. 45 N.Y. at P. 401.
>
> * * *
>
> They may not in fact have had in mind the particular meaning charged by the plaintiff, or intended the special injury produced; but the law for remedial purposes, adjudges that a wrongdoer intends all the natural and proximate consequences of the wrong, and administers punishment and allows compensation upon this presumption." 45 N.Y. at P. 404.

In Mencher vs. Chesley, 297 N.Y. 94 (1947), the Court of Appeals reaffirmed the law by stating:

> "[1] It has long been the rule that words charged to be defamatory are to be taken in their natural meaning and that the courts will not strain to interpret them in their mildest and most inoffensive sense to hold them nonlibelous. See e.g., Townsend vs. Huges, 2 Mod. 150, 159; Turrill vs. Dolloway,

> 17 Wend. 426, 428; Cafferty vs. Southern Tier Publishing Co., 226 N.Y. 87, 93, 123 N.E. 76, 78. While in the present case there was no direct charge that plaintiff was a communist or had communist affiliations or that he had misused his public office, the statement, read against the background of its issuance, under the circumstances of its publication, is certainly susceptible of such a construction. 297 N.Y. at P.99.
>
> * * *
>
> We do not - indeed, we may not - determine that that is the only meaning to be placed upon the words used; to do so would encroach upon the province of the jury. It is enough that reasonable basis exists for such an interpretation. Once that is decided, it becomes the jury's function to say whether that was the sense in which the words were likely to be understood by the ordinary and average reader." (P. 100)(Emphasis added.)

So too in the following cases where the Courts held that where words are capable of more than one construction, it is for the jury to determine in what sense they were intended and, therefore, whether they were libelous. Povira vs. Boget, 240 N.Y. 314 (1925); Neaton vs. Lewis Apparel Stores, Inc., 267 A.D. 728, 48 N.Y.S. 2d 492 (3rd Dept. 1944).

It is submitted that the statements in the articles pertaining to plaintiff are libelous per se. However, at the very least, the Court below should have allowed a jury to determine whether the words used could reasonably be construed and interpreted in such manner.

(c) The New York "Single Instance" Rule Is Not Applicable in the Case at Bar

In determining that neither of the two articles was libelous per se, the District Court avoided the question of whether the Complaint should be dismissed under the "single instance" rule, a point briefed in the Court below. However, in his opinion in Bordoni vs. New York Times, (A 93-110), Judge Weinfeld held that "even if the article [in the Times] were read to defame plaintiff, the complaint must be dismissed under New York law." (A 105).

It is submitted that the "single instance" rule does not bar recovery under the facts herein, nor under the cases.

Defendants' contention that the articles in question are not libelous per se since they only charge plaintiff with misfeasance on a single occasion in organizing the Franklin National Bank's foreign exchange department and relate to one aspect of his varied professional career is not consonant with the contents of the articles and lacks legal merit.

The New York "single instance" rule is a limited doctrine which requires special damages to be pleaded and proved if the defamatory material does not imply general unskillfulness, general incompetence or lack of integrity in a professional's calling and such material relates only to a particular isolated

transaction in an individual's trade or profession. The rule has no application where the article charges the plaintiff with commission of a criminal act.

In the instant action, defendants' articles do not state nor imply that plaintiff made only one error involving an isolated transaction with respect to Franklin National Bank's foreign exchange department. Rather, they charge that the plaintiff organized the Bank's foreign exchange department and developed "speculative" policies and practices, which over a course of years involving a myriad of foreign currency transactions conducted on behalf of the Bank, resulted in Franklin National Bank's suffering losses of $45.8 million, which in turn brought the Bank to the brink of financial disaster. Further, the articles imply that plaintiff was involved in fraudulent and illegal transactions and that he may be subject to criminal prosecution.

In November vs. Time, Inc., supra, an article stated that plaintiff, an attorney, had failed to properly advise a client to appear at a hearing to be held by the Attorney General of New York State. The language in the article was as follows:

> "D'Amato also got into difficulty when he failed to answer a subpoena issued by State Attorney General Louis Lefkowitz. D'Amato says that November, who serves as attorney for D'Amato and Patterson told him to ignore it, that the Hearing had been postponed. D'Amato did as he was instructed and he was arrested, hauled into Court, fined $250 and given a suspended sentence of 30 days in the workhouse. The case is now on appeal, but D'Amato was to see Lefkowitz Tuesday and there were reports 'something might happen to him.'" 13 N.Y. 2d at P. 177, 178.

Defendant in the November case argued that the article merely accused plaintiff of a single instance of professional error. The Court refused to apply the "single instance" rule since it felt that the article did not merely charge the attorney with professional ignorance or lack of skill on a single occasion but rather imputed a total lack of professional conduct.

The position adopted in November was followed in Mason vs. Sullivan, 26 App. Div. 2d 115, 271 N.Y.S. 2d 214 (1st Dept. 1966). In Mason, the plaintiff, a comedian, alleged libel as a result of defamatory statements concerning one performance on defendant's television show. The Court rejected the "single instance" rule advocated by the defendant since it felt that the statements imputed to plaintiff a complete lack of professional character and conduct.

In the case at bar, the "single instance" rule is likewise not applicable. The defendants, for the purposes of their motion, have admitted plaintiff's expertise and reputation in the international banking field. Therefore, to attribute to him Franklin National Bank's foreign exchange losses of $45.8 million over a substantial period of time is to generally attack and discredit his skillfulness, competency, and integrity in his chosen field. The accusation is not to one specific foreign currency transaction or single advice, but to the entire series of foreign currency transactions conducted by the Bank at the direction of Bordoni. See November vs. Time, Inc., supra, and Twiggar vs. Ossining Printing and Pub. Co., 161 A.D. 718, 146 N.Y.S. 529 (1914).

In Kleeberg vs. Sipser, 265 N.Y. 87, 191 N.Y.S. 845 (1934), the Court of Appeals held that the "single instance" rule was not applicable where the libel related to a series of transactions pertaining to one particular client of the plaintiff. Kleeberg, a New York attorney, was retained to represent a client in conjunction with the negotiations of a certain business transaction. Sipser (whose relationship to the transaction is not clear) during the course of negotiations, on five separate occasions, accused Kleeberg of not properly representing his client's interests, attempting to sabotage the deal and merely favoring lawsuits. The Court, in denying plaintiff's motion to dismiss the Complaint, stated:

> "...This language is such that a jury could find that it amounts to an untrue charge of numerous infractions of elementary professional ethics and that it tended to bring gross discredit upon the attorney..." 265 N.Y. at P. 93. (Emphasis added.)

In Arnold Bernhard & Co., Inc. vs. Financial Pub. Corp., 25 N.Y. 2d 712, 307 N.Y.S. 2d 220 (1969), the appeals courts applied the "single instance" rule since the article had merely referred to an error in judgment with respect to one particular recommendation concerning a specific stock, which could not be expanded to impute a lack of integrity or professional misconduct with respect to the general publication of the magazine. This is clearly distinguishable from the accusations in the Post articles.

Moreover, the articles published by defendants do not merely attack plaintiff's general competence in his field, but go further and imply that plaintiff was involved in fraudulent and illegal transactions. Charging an individual with a crime is libelous per se and generally attacks plaintiff's integrity. This, in and of itself, renders plaintiff's Complaint actionable without alleging special damages.

CONCLUSION

The articles of June 22, 1974, and June 26, 1974, are libelous per se. The "single instance" rule is not applicable The opinion of the District Court to the contrary was erroneous. The judgment appealed from should be reversed.

Respectfully submitted,

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Walter M. Schwartz, Esq.
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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------x

CARLO BORDONI,

Plaintiff-Appellant,

-against-

WASHINGTON POST, JACK EGAN, and B.C. BRADLEE,

Defendants-Respondents,

----------x

U.S.C.A. Case No. 75-7513

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
: ss:
COUNTY OF NEW YORK)

SHEILA KENNEALLY, being duly sworn, deposes and says that deponent is not a party to the within action, is over 18 years of age, and resides at Bronx, New York.

That on the 4th day of November, 1975, deponent served two copies of the within Appellant's Brief upon WILLIAMS, CONNOLLY & CALIFANO, attorneys for Defendants-Respondents, in this action at 1000 Hill Building, Washington, D.C. 20006, the address designated by said attorneys for that purpose, by mailing the same in a sealed envelope with postage prepaid thereon in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

Sworn to before me this
4th day of November, 1975.

Sheila Kenneally
SHEILA KENNEALLY

Lois S. Barasch

LOIS S. BARASCH
Notary Public, State of New York
No 31-0153800
Qualified in New York Co.
Commission Expires March 30, 1977

UNITED STATES COURT OF APPEALS
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Plaintiff-Appellant,

-against-

U.S.C.A. Case No.
75-7513

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That on the 4th day of November, 1975, deponent served one copy of the within Appellant's Joint Appendix upon WILLIAMS CONNOLLY & CALIFANO, attorneys for Defendants-Respondents, in this action at 1000 Hill Building, Washington, D.C. 20006, the address designated by said attorneys for that purpose, by mailing the same in a sealed envelope with postage prepaid thereon in an official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

Sheila Kenneally
SHEILA KENNEALLY

Sworn to before me this

4th day of November, 1975.

Lois S. Barasch

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Index No. *Year 19*

UNITED STATES COURT OF APPEALS
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CARLO BORDONI,

Plaintiff-Appellant,

-against-

WASHINGTON POST, JACK EGAN, and B.C. BRADLEE,

Defendants-Respondents.

AFFIDAVITS OF SERVICE

Attorneys for **Di FALCO FIELD LOMENZO & O'ROURKE**
Plaintiff-Appellant

605 THIRD AVENUE
BOROUGH OF MANHATTAN, NEW YORK, N.Y. 10016
(212) 986-2434

To:

Attorney(s) for

Service of a copy of the within *is hereby admitted.*

Dated:

.....

Attorney(s) for

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☐ NOTICE OF SETTLEMENT *that an Order of which the within is a true copy will be presented for settlement to the Hon. one of the judges of the within named Court, at on 19 , at M.*

Dated:

Di FALCO FIELD LOMENZO & O'ROURKE
Attorneys for

605 THIRD AVENUE
BOROUGH OF MANHATTAN, NEW YORK, N.Y. 10016

To:

Attorney(s) for

STATE OF NEW YORK, COUNTY OF ss:

I, the undersigned, am an attorney admitted to practice in the courts of New York State, and

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☐ Attorney's Certification — certify that the annexed has been compared by me with the original and found to be a true and complete copy thereof.

☐ Attorney's Verification by Affirmation — say that: I am the attorney of record, or of counsel with the attorney(s) of record, for . I have read the annexed know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon the following:

The reason I make this affirmation instead of is

I affirm that the foregoing statements are true under penalties of perjury.

Dated:

.....
(Print signer's name below signature)

STATE OF NEW YORK, COUNTY OF ss:

being sworn says: I am

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☐ Individual Verification — in the action herein: I have read the annexed know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

☐ Corporate Verification — the of a corporation, one of the parties to the action: I have read the annexed know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

My belief, as to those matters therein not stated upon knowledge, is based upon the following:

Sworn to before me on , 19

.....

.....
(Print signer's name below signature)

STATE OF NEW YORK, COUNTY OF ss:

being sworn says: I am not a party to the action, am over 18 years of age and reside at

On , 19 , I served a true copy of the annexed in the following manner:

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☐ Service By Mail — by mailing the same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

☐ Personal Service — by delivering the same personally to the persons and at the addresses indicated below:

Sworn to before me on , 19

.....

.....
(Print signer's name below signature)